

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20

SQUIRES LUMBER COMPANY, INC.,  
  
and  
  
CARPENTERS LOCAL 2236, UNITED  
BROTHERHOOD OF CARPENTERS AND  
JOINERS OF AMERICA.

CASE NOS. 20-CA-160279  
20-CA-162074  
20-CA-162418  
20-CA-162722  
20-CA-162732  
20-CA-162834  
20-CA-166576  
20-CA-167530

**RESPONDENT'S RESPONSE TO AND  
REQUEST FOR RECONSIDERATION  
OF ALJ'S ORDER GRANTING IN  
PART AND DENYING IN PART  
GENERAL COUNSEL'S AND  
CHARGING PARTY'S MOTION TO  
STRIKE AND BILL OF  
PARTICULARS**

DATE: February 22, 2016  
TIME: 9:00 a.m.  
LOCATION: E.V.S. Robbins Courtroom  
San Francisco, CA

On February 18, 2016, Administrative Law Judge Mary Cracraft ("ALJ") issued her Order Granting In Part and Denying In Part General Counsel's and Charging Party's Motion to Strike and Bill of Particulars.

The Order erroneously states that "Respondent does not address this defense [regarding the Twelfth Affirmative Defense] in its response to the request for a bill of particulars." In fact, Respondent's Answer and/or Opposition to General Counsel's (1) Motion to Strike and (2) Motion For a Bill of Particulars, received by Region 20 on February 16, 2016 (signed for by D. Demar),

fully sets forth a particularized basis for its assertion. Another copy of Respondent's timely-filed Answer and/or Opposition to General Counsel's (1) Motion to Strike and (2) Motion For a Bill of Particulars (along with the Proof of Service and FEDEX delivery confirmation) is attached.

Respondent respectfully requests that the ALJ reconsider her Order in light of Respondent's timely-filed Answer.

DATED: February 17, 2016.

Respectfully submitted,

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By: 

Dwight L. Armstrong

Attorneys for Respondent  
SQUIRES LUMBER COMPANY, INC.

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**RESPONDENT'S ANSWER AND/OR  
OPPOSITION TO GENERAL  
COUNSEL'S (1) MOTION TO STRIKE  
AND (2) MOTION FOR A BILL OF  
PARTICULARS**

DATE: February 22, 2016

TIME: 9:00 a.m.

LOCATION: E.V.S. Robbins Courtroom  
San Francisco, CA

Comes now Respondent, Squires Lumber Company, Inc. ("Respondent," the "Company" or "Squires"), pursuant to Section 102.24 of the Rules and Regulations of the National Labor Relations Board (the "Board"), to answer or to oppose, as the case may be, Counsel for the General Counsel's ("General Counsel"), Motion to Strike and Motion For a Bill of Particulars dated February 10, 2016.<sup>1</sup>

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<sup>1</sup> Administrative Law Judge Cracraft has issued an Order to Show Cause on or before February 16, 2016, why the General Counsel's motions should not be granted.

**I. Bill of Particulars.**

The General Counsel has filed a Motion for a Bill of Particulars as to Respondent's Fourth and Twelfth Affirmative Defenses. Respondent provides the following bases for such affirmative defenses.

**A. Twelfth Affirmative Defense.**

Paragraph 27 of Respondent's Amended Answer to Amended Consolidated Complaint alleges:

**"TWELFTH AFFIRMATIVE DEFENSE**

Without admitting that it violated the Act in any manner whatsoever, Respondent has fully remedied the alleged unfair labor practices alleged in the Complaint."

Respondent has taken at least the following specific actions to remedy the alleged unfair labor practices alleged in the Complaint:

- On January 5, 2016, only two (2) working days after the Complaint was issued in this case (on December 31, 2015), Respondent voluntarily posted the Board's poster entitled "Employee Rights Under the National Labor Relations Act"<sup>2</sup> in a conspicuous location where employees easily can read it. A copy of the poster and photographs of its posting are attached hereto as Exhibits "A" and "B," respectively.
- On January 5, 2016, on a nonadmission basis, Respondent also voluntarily posted a "Notice to Employees," a copy of which is attached hereto as Exhibit "C,"

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<sup>2</sup> Appellate courts have enjoined the Board's rule requiring the posting of employee rights in this manner. However, employers are free to voluntarily post the Notice of Employee Rights, if they wish.

addressing the unfair labor practices alleged in the Complaint. Such Notice will remain posted for at least 60 consecutive days.

- On January 15, 2016, Respondent implemented a new and revised Employee Handbook (revised December 2015), a copy of which will be produced in response to Subpoena Duces Tecum B-1-Q8TMF1 issued by Counsel for the General Counsel. Among other things, this revised Employee Handbook (i) removes the allegedly offending provisions (e.g., no longer stating that employees should "do their jobs pleasantly"), and (ii) specifically states:

"Nothing in this Handbook will be interpreted or applied in a way that would interfere with the rights of employees to self-organize, form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in such activities."

B. Fourth Affirmative Defense.

Paragraph 19 of Respondent's Amended Answer to Amended Consolidated Complaint alleges:

"FOURTH AFFIRMATIVE DEFENSE

The bargaining unit sought by the Union is not appropriate for purposes of collective-bargaining."

On September 2, 2015, the date on which the Union contends that a majority of Respondent's employees desired representation, Respondent employed twelve (12) employees, one (1) of whom transferred from Southern California, three (3) of whom had moved from temporary agency to regular status, seven (7) of whom were in temporary agency status on that date, and one (1) of whom was a driver employed by an entity related to Squires. Therefore, Respondent contends that the three-person unit sought by the Union is not appropriate for purposes of collective-bargaining.

**II. Motion to Strike.**

In Paragraph 25 of Respondent's Answer to Amended Consolidated Complaint, Respondent alleges:

**"TENTH AFFIRMATIVE DEFENSE**

The Charging Party's own misconduct in violation of the Act, including the 'secondary' activity found by Region 20 to violate Section 8(b)(4) of the Act (in its 'merits dismissal' of December 30, 2015), requires the withholding of a bargaining order even if it were otherwise appropriate (which Respondent denies)."

In the event that unfair labor practices are found in this case that might, under normal circumstances, warrant a *Gissel* bargaining order (which Respondent contends would not be the case here in any event), Board precedent confirms that the Administrative Law Judge may consider the Union's own unlawful conduct in denying such affirmative relief. *See, e.g., Bernstein*, 144 NLRB 1592, 1596 (1963).

**III. Conclusion.**

Respondent respectfully submits that the Motion for a Bill of Particulars is now moot, and that the Motion to Strike should be denied.

DATED: February 12, 2016.

Respectfully submitted,

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By: 

Dwight L. Armstrong

Attorneys for Respondent  
SQUIRES LUMBER COMPANY, INC.

# **EXHIBIT A**





# Employee Rights

## Under the National Labor Relations Act

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The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity or to refrain from engaging in any of the above activity. Employees covered by the NLRA\* are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board (NLRB), the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace.

### Under the NLRA, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.
- Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.
- Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union.
- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.
- Strike and picket, depending on the purpose or means of the strike or the picketing.
- Choose not to do any of these activities, including joining or remaining a member of a union.

### Under the NLRA, it is illegal for your employer to:

- Prohibit you from talking about or soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.
- Question you about your union support or activities in a manner that discourages you from engaging in that activity.
- Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in concerted activity for mutual aid and protection, or because you choose not to engage in any such activity.
- Threaten to close your workplace if workers choose a union to represent them.
- Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.
- Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances.
- Spy on or videotape peaceful union activities and gatherings or pretend to do so.

### Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:

- Threaten or coerce you in order to gain your support for the union.
- Refuse to process a grievance because you have criticized union officials or because you are not a member of the union.
- Use or maintain discriminatory standards or procedures in making job referrals from a hiring hall.
- Cause or attempt to cause an employer to discriminate against you because of your union-related activity.
- Take adverse action against you because you have not joined or do not support the union.

**If you and your co-workers select a union to act as your collective bargaining representative, your employer and the union are required to bargain in good faith in a genuine effort to reach a written, binding agreement setting your terms and conditions of employment. The union is required to fairly represent you in bargaining and enforcing the agreement.**

**Illegal conduct will not be permitted.** If you believe your rights or the rights of others have been violated, you should contact the NLRB promptly to protect your rights, generally within six months of the unlawful activity. You may inquire about possible violations without your employer or anyone else being informed of the inquiry. Charges may be filed by any person and need not be filed by the employee directly affected by the violation. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits, and may order an employer or union to cease violating the law. Employees should seek assistance from the nearest regional NLRB office, which can be found on the Agency's Web site: <http://www.nlr.gov>.

You can also contact the NLRB by calling toll-free: 1-866-667-NLRB (6572) or (TTY) 1-866-315-NLRB (1-866-315-6572) for hearing impaired.

If you do not speak or understand English well, you may obtain a translation of this notice from the NLRB's Web site or by calling the toll-free numbers listed above.

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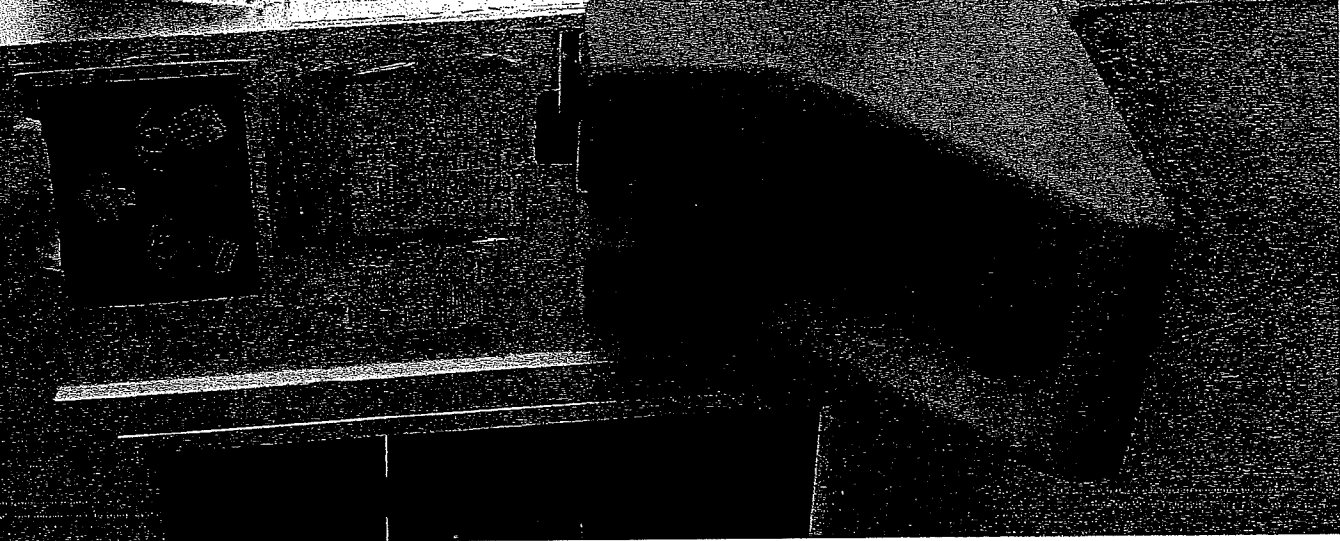
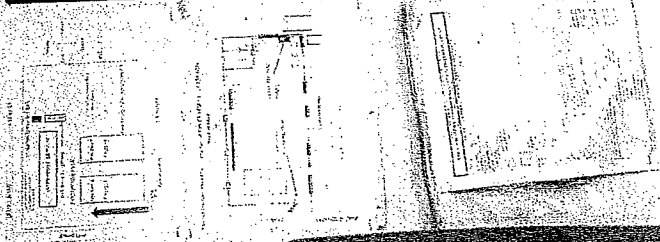
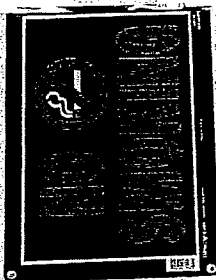
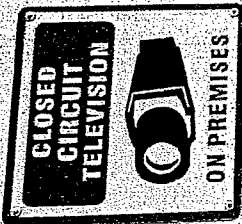
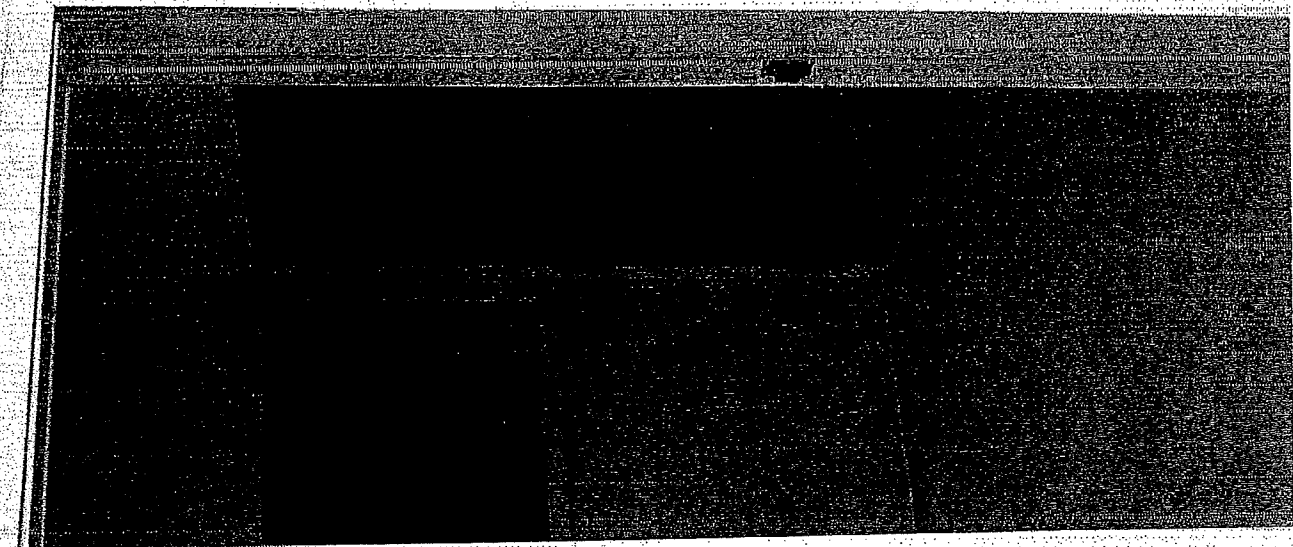
\*The National Labor Relations Act covers most private-sector employers. Excluded from coverage under the NLRA are public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered).

**This is an official Government Notice and must not be defaced by anyone.**

# EXHIBIT B



FIRST AID  
KIT INSIDE



# EXHIBIT C

## SQUIRES LUMBER COMPANY

### NOTICE TO EMPLOYEES

The National Labor Relations Board, an agency of the United States Government, has alleged that we violated federal labor law in certain respects. We deny these allegations. Nevertheless, in order to avoid any misunderstanding, we voluntarily want to provide you with the following information.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

Accordingly, we give our employees the following assurances:

WE WILL issue a revised Employee Handbook. No part of the Employee Handbook will be construed to interfere with employees' rights under Section 7 of the National Labor Relations Act.

WE WILL NOT require employees to wear hard hats except in work areas for safety reasons.

WE WILL NOT move or maintain any portable toilet into employees' work or break areas.

WE WILL NOT threaten employees with job loss for supporting the Carpenters Union.

WE WILL NOT threaten to cause the arrest of employees and/or nonemployees for engaging in union activities.

WE WILL NOT discipline, terminate or retaliate against employees because of their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their Section 7 rights.

SQUIRES LUMBER COMPANY

Dated

1/5/16

By



Chris Paxson, President

**THIS IS AN OFFICIAL SQUIRES LUMBER COMPANY NOTICE AND MUST NOT BE  
DEFACED BY ANYONE**

THIS NOTICE WILL REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF  
POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER  
MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS  
PROVISIONS MAY BE DIRECTED TO KELLY BANKSTON, HUMAN RESOURCES  
MANAGER/SAFETY COORDINATOR, AT (909) 954-2858.

**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) and am not a party to this action. My business address is 1900 Main Street, Fifth Floor, Irvine, California 92614-7321.

On February 12, 2016, I served the within document described as:

**RESPONDENT'S ANSWER AND/OR OPPOSITION TO GENERAL COUNSEL'S  
(1) MOTION TO STRIKE AND (2) MOTION FOR A BILL OF PARTICULARS**

on the interested parties in this action as stated below:

Gary P. Provencher, Esq.  
Matthew J. Gauger, Esq.  
Weinberg Roger & Rosenfeld  
428 J Street, Suite 520  
Sacramento, CA 95814-2341

- ☒ **BY OVERNIGHT DELIVERY:** I deposited in a box or other facility regularly maintained by FedEx, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document in a sealed envelope or package designated by the express service carrier, addressed as indicated above on the above-mentioned date, with fees for overnight delivery paid or provided for.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Executed on February 12, 2016, at Irvine, California.

\_\_\_\_\_  
Patricia Usmiller-Adamson  
(Type or print name)

Patricia Usmiller-Adamson  
(Signature of Declarant)



**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 and am not a party to this action. My business address is 1900 Main Street, Fifth Floor, Irvine, California 92614-7321.

On February 12, 2016, I served the original and four (4) copies of the within document described as:

**RESPONDENT'S ANSWER AND/OR OPPOSITION TO GENERAL COUNSEL'S  
(1) MOTION TO STRIKE AND (2) MOTION FOR A BILL OF PARTICULARS**

on the interested parties in this action as stated below:

Joseph F. Frankl  
Regional Director  
National Labor Relations Board  
Region 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

- ☒ **BY OVERNIGHT DELIVERY:** I deposited in a box or other facility regularly maintained by FedEx, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document in a sealed envelope or package designated by the express service carrier, addressed as indicated above on the above-mentioned date, with fees for overnight delivery paid or provided for.

I declare under penalty of perjury that I am employed in the office of a member of the bar of U.S. District Court of the State of California at whose direction the service was made and that the foregoing is true and correct.

Executed on February 12, 2016, at Irvine, California.

Patricia Usmiller-Adamson  
\_\_\_\_\_  
(Type or print name)

*Patricia Usmiller-Adamson*  
\_\_\_\_\_  
(Signature of Declarant)



## Usmiller-Adamson, Patti

**From:** trackingupdates@fedex.com  
**Sent:** Tuesday, February 16, 2016 10:10 AM  
**To:** Usmiller-Adamson, Patti  
**Subject:** FedEx Shipment 592064462222 Delivered



## Your package has been delivered

Tracking # 592064462222

Ship date:  
Fri, 2/12/2016

MAILROOM  
ALLEN MATKINS  
IRVINE, CA 92614  
US

Delivery date:  
Tue, 2/16/2016  
10:07 am

JOSEPH F. FRANKL  
REGINAL DIRECTOR,  
REGION 20  
901 MARKET STREET.  
SUITE 400 NATIONAL  
LABOR RELATIONS  
BOARD  
SAN FRANCISCO, CA  
94103  
US



### Shipment Facts

Our records indicate that the following package has been delivered.

<b>Tracking number:</b>	<u>592064462222</u>
<b>Status:</b>	Delivered: 02/16/2016 10:07 AM Signed for By: D.DEMAR
<b>Department number:</b>	DWIGHT L. ARMSTRONG
<b>Reference:</b>	370073-00006 - 1553
<b>Signed for by:</b>	D.DEMAR
<b>Delivery location:</b>	SAN FRANCISCO, CA
<b>Delivered to:</b>	Receptionist/Front Desk

**Service type:** FedEx Priority  
Overnight

**Packaging type:** FedEx Pak

**Number of pieces:** 1

**Weight:** 2.10 lb.

**Special  
handling/Services:** No Signature  
Required

Deliver Weekday

☒ Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 12:09 PM CST on 02/16/2016.

To learn more about FedEx Express, please go to [fedex.com](http://fedex.com).

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above, or go to [fedex.com](http://fedex.com).

This tracking update has been sent to you by FedEx at your request. FedEx does not validate the authenticity of the requestor and does not validate, guarantee or warrant the authenticity of the request, the requestor's message, or the accuracy of this tracking update. For tracking results and terms of use, go to [fedex.com](http://fedex.com).

Thank you for your business.

**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) and am not a party to this action. My business address is 1900 Main Street, Fifth Floor, Irvine, California 92614-7321.

On February 17, 2016, I served the within document described as:

**RESPONDENT'S RESPONSE TO AND REQUEST FOR RECONSIDERATION  
OF ALJ'S ORDER GRANTING IN PART AND DENYING IN PART GENERAL  
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Matthew J. Gauger, Esq.  
Weinberg Roger & Rosenfeld  
428 J Street, Suite 520  
Sacramento, CA 95814-2341  
([mgauger@unioncounsel.net](mailto:mgauger@unioncounsel.net))

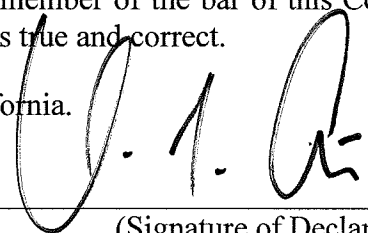
Matthew C. Peterson, Esq.  
Field Attorney  
Region 20  
National Labor Relations Board  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738  
([matt.peterson@nlrb.gov](mailto:matt.peterson@nlrb.gov))

☒ **BY E-MAIL:** I electronically served the above-described document on the parties by electronically transmitting said document to the e-mail addresses listed above.

I declare under penalty of perjury that I am a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

Executed on February 17, 2016, at Irvine, California.

Dwight L. Armstrong  
\_\_\_\_\_  
(Type or print name)

  
\_\_\_\_\_  
(Signature of Declarant)